

July 20, 2004

The Honorable Jo Anne Barnhart
Commissioner
Social Security Administration
ITCB, Room 850
500 E. St., S.W.
Washington, D.C. 20254

Dear Commissioner Barnhart:

Earlier this year, the Congress passed H.R. 743, the Social Security Protection Act (“SSPA”) with broad bipartisan support. This bill was subsequently signed into law by President Bush as Public Law 108-203. This legislation provides crucial protections to the integrity of the United States’ Social Security system.

Congress designed section 211 of SSPA to prevent – in most cases – individuals from receiving Social Security retirement or disability benefits on the basis of work illegally performed by aliens in the United States. The Senate Finance Committee’s Report, filed with the legislation, stated (regarding section 211) that “[i]ndividuals who were never legally permitted to work in the United States should not be able to collect Social Security benefits on the basis of their illegal earnings. The Social Security program should not reward those who violate our immigration laws.”¹ The Social Security Trust Fund will face enough challenges to its solvency in future decades without being dissipated by payments based on work performed illegally in the United States. Additionally, there is no greater magnet for illegal immigration to the U.S. than the availability of jobs, and allowing illegal work to qualify for Social Security retirement and disability benefits only adds to the allure of such work and our difficulty in controlling the Nation’s borders.

Given section 211's importance in the context of Congressional hearings (at which you have

¹ S. Rep. No. 108-176, at 23 (2003).

testified) where Members have expressed strong criticism of existing SSA practices that do not differentiate between illegal earnings and legal earnings, we find it surprising that revised The Honorable Jo Anne Barnhart

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instructions in the policy operation manual or new regulations have not already been published. Section 211 should help to reduce the problem of unmatched earnings, and contribute to a reduction in the fraudulent use of Social Security numbers by illegal aliens. In this regard, we want to reiterate the importance of section 211 and stress the proper interpretation of this section consistent with clear congressional intent. It is extremely important that SSA revise procedures to implement section 211 and issue public notice that SSA will begin scrutiny and enforcement actions to implement section 211.

Section 211 provides that retirement and disability benefits cannot be provided to non- citizens (or their dependents or survivors) unless they have been assigned Social Security numbers that were at the time of assignment, or at any later time, valid as account numbers based on the workers being lawful permanent residents or otherwise eligible to work in the United States. The only ways that aliens who worked illegally could meet this requirement would be if they had previously been issued work-authorized Social Security numbers and had continued to work following the expiration of their work-authorization (such as under a temporary worker visa) or had been subsequently provided legal status conferring the ability to work (such as through an amnesty or certain guestworker program).

Section 211 applies to benefit applications based on Social Security numbers issued on or after January 1, 2004. Congress envisioned this effective date working as follows:

Section 211 would not apply if the alien who worked without authorization in the U.S. had received a valid Social Security number before January 1, 2004. Such a scenario would occur if 1) an alien worked illegally despite receiving a non-work authorized Social Security number before such date, 2) an alien received a work authorized Social Security number before such date and worked past the expiration of his or her work authorization, or 3) an alien worked illegally and then was granted legal status conferring the ability to work and was issued a Social Security number before such date.

However, most aliens working illegally in the U.S. meet the documentation requirement of section 274A of the Immigration and Nationality Act by presenting their employers with bogus Social Security numbers or steal the identities (and Social Security numbers) of work-authorized individuals. Such an alien (or his or her spouse or children) may approach SSA and seek to receive benefits based on work in the U.S. performed on the bogus or stolen numbers. As you know, if the applicant qualifies for benefits, the SSA will then issue a valid Social Security number. In any case where SSA issued or issues a number after January 1, 2004, to an alien in such a circumstance, the prohibition of section 211 will apply, even if the illegally-performed work took place before 2004. We must emphasize that the Congressional intent was that SSA apply the effective date contained in the legislation in this manner. We expect that SSA's revised policy operation manual or new regulations implementing section 211

will adhere to this reading.

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On June 29, 2004, you and Mexican Social Security Institute Director Santiago Levy signed a Totalization Agreement in Guadalajara, Mexico. We have seen an earlier draft of this agreement that omits any mention or discussion of segregating earnings from Mexican or American wage earners working legally versus those working illegally. It is extremely important that the Totalization Agreement with Mexico be amended to incorporate language that addresses section 211's prohibition, so that there will be no misunderstanding with this important neighbor, and so that Social Security benefits, even on a pro-rata basis, are not provided in violation of federal law.

Finally, we expect SSA to notify the countries with whom we have in the past entered into Totalization Agreements (Australia, Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, South Korea, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom) regarding the impact that section 211 will have on their nationals who might have worked illegally in the United States.

We request that you respond to this letter by August 10, 2004, with specific information regarding the steps SSA is taking to implement section 211, address section 211 in the Totalization Agreement with Mexico, and notify countries with which Totalization Agreements are in force of the effect of section 211. If you have any questions, please contact us or have your staff contact Brian Zimmer at (202) 225-3951 or George Fishman at (202) 225-5727.

Thank you for your attention to this important matter.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

JOHN N. HOSTETTLER
Chairman, Subcommittee on
Immigration, Border Security and
Claims

FJS/gf/bz